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April 28, 2004

BY EXPRESS MAIL # EL608307235US

Commissioner of Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514

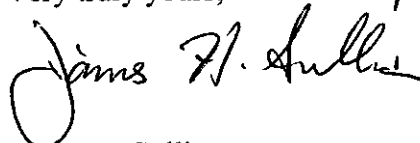
Re: Motion to Compel Discovery by Opposers National Football League and NFL
Properties LLC to Nutrition for Life International, Inc. in Opposition No.
91/157,365; Mark: NFLI

To the Commissioner:

Enclosed please find Opposer's original Motion to Compel Discovery and the supporting Affidavit of James H. Sullivan in the above-referenced matter.

Please stamp and return the enclosed postcard to acknowledge receipt for our files.

Very truly yours,



James H. Sullivan

Enclosures

cc: David M. Proper, Esq.
Rakesh M. Amin, Esq.
Robert L. Raskopf, Esq.
Jennifer J. Millones, Esq.



04-30-2004

U.S. Patent & TMO/TM Mail Rpt Dt. #77

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

NATIONAL FOOTBALL LEAGUE and NFL
PROPERTIES LLC,

Opposers,

— against —

NUTRITION FOR LIFE INTERNATIONAL,
INC.,

Applicant.

Opposition No. 91/157,365

MOTION TO COMPEL DISCOVERY

Pursuant to Rule 2.120(e) of the Trademark Rules of Practice, 37 C.F.R. § 2.120(e), Opposers National Football League (the “NFL”) and NFL Properties LLC (“NFLP,” together with the NFL, “Opposers”), by their attorneys White and Case LLP, hereby move for an order requiring Applicant to answer all interrogatories contained within Opposers’ First Set of Interrogatories and produce all documents and things requested by Opposers’ First Request for Production of Documents and Things. Opposers simultaneously move to stay all testimony periods pending receipt of Applicant’s discovery responses and seek all relief that this Board deems just and proper, including but not limited to an order of default judgment.

FACTUAL BACKGROUND

Since at least 1941, Opposers have used the mark NFL and various other similar marks in connection with their business of organizing, conducting and promoting the NFL and its thirty-two member clubs, each of which owns and operates a professional football team. (Notice of

Opp'n ¶¶ 1, 3.) On May 10, 2000, Applicant filed an intent-to-use application to register the mark NFLI in International Classes 005 and 030. (Id. ¶ 8.) Because Opposers will be damaged by the registration sought by Applicant as such registration will support and assist Applicant in the confusing and misleading use of the mark sought to be registered, and will give color of exclusive statutory rights to Applicant in violation and derogation of the prior and superior rights of Opposers, Opposers timely filed their Notice of Opposition with the Trademark Trial and Appeal Board on July 28, 2003. Applicant filed its Answer and Affirmative Defenses to Notice of Opposition on September 23, 2003.

On March 1, 2004, Opposers timely served upon Applicant Opposers' First Set of Interrogatories and Opposers' First Request for Production of Documents and Things ("Opposers' Discovery Requests").¹ (See Affidavit of James H. Sullivan ("Sullivan Aff.") ¶¶ 4-6, Exs. A & B.)² Applicant's responses were due on April 2, 2004. See 37 C.F.R. § 2.120(a). When Opposers had not received responses from Applicant more than a week after they were due, Opposers on April 12, 2004 sent a letter to Applicant via Federal Express, asserting that, if

¹ On the same date, Opposers also served upon Applicant Opposers' First Request for Admissions to Applicant. (Sullivan Aff. ¶¶ 4, 7, Ex. C.) Opposers' First Request for Admissions do not form part of the present motion because, pursuant to Section 411.02 of the Trademark Trial and Appeal Board Manual of Procedure (2004), "[i]f a party on which requests for admission have been served fails to file a timely response thereto, the requests will stand admitted unless the party is able to show that its failure to timely respond was the result of excusable neglect" See also TBMP § 527.01(d) ("the requests will stand admitted (automatically), and may be relied upon by the propounding party") (emphasis added). Given that Applicant failed to timely respond to the requests for admission and has not attempted to make a showing of "excusable neglect," Opposers' Requests for Admission automatically stand admitted.

² In conformance with Rule 2.120(e) of the Trademark Rules of Practice, the Sullivan Affidavit constitutes a written statement from Opposers showing that Opposers have made a good faith effort to resolve the issue presented in this Motion, namely, Applicant's failure to respond to Opposers' Discovery Requests.

Applicant's responses to Opposers' Discovery Requests were not received by April 19, 2004, Opposers would be forced to "consider all available legal options" including a motion to compel. (Id. ¶ 8, Ex. D.)

Having not received a response to their April 12, 2004 letter, Opposers, through their attorney, called Applicant's counsel on April 20, 2004. (Id. ¶ 9.) Opposers' counsel left a voicemail message for Applicant's counsel, noting both the continued lack of response and the impending start of the testimony period in the proceeding, and requesting a return telephone call by the end of the day. (Id.) As of the filing of this Motion, Applicant utterly has failed to respond to Opposers' Discovery Requests, written correspondence and voicemail. (Id. ¶ 10.)

Opposers now move for an order requiring Applicant to respond to Opposers' Discovery Requests. Opposers also seek all relief and sanctions that this Board deems just and proper, including but not limited to an order of default judgment.

ARGUMENT

Applicant has a duty to make a good faith effort to satisfy the discovery requests of its opponent. TBMP § 408.01; see also Johnston Pump/Gen. Valve Inc. v. Chromalloy Am. Corp., 10 U.S.P.Q.2d 1671, 1674-75 (TTAB 1989); Medtronic Inc. v. Pacesetters Sys., Inc., 222 U.S.P.Q. 80, 83 (TTAB 1984). Because Applicant has failed to comply with Opposers' Discovery Requests, Opposers may move for an order to compel discovery. 37 C.F.R. § 2.120(e) (2004); TBMP §§ 411, 523; see also Jain v. Ramparts, Inc., 49 U.S.P.Q.2d 1429 (TTAB 1998); MacMillan-Bloedel Ltd. v. Arrow-M Corp., 203 U.S.P.Q. 952, 953 (TTAB 1979). Because Applicant has failed to respond timely to Opposers' Discovery Requests and has failed to demonstrate that such delay was a result of excusable neglect, this Board may find that Applicant has forfeited its right to object on the merits to Opposers' Discovery Requests. See

Trademark Trial and Appeal Board Practice and Procedure § 3.90 (2003); Bison Corp. v. Perfecta Chemie B.V., 4 U.S.P.Q.2d 1718, 1721 (TTAB 1987); Envirotech Corp. v. Compagnie Des Lampes, 219 U.S.P.Q. 448, 449 (TTAB 1979); Crane Co. v. Shimano Industrial Co., Ltd., 184 U.S.P.Q. 691 (TTAB 1975).

This Board is also empowered to sanction Applicant for failing to comply with Opposers' Discovery Requests. See Fed. R. Civ. P. 37; 37 C.F.R. §2.120(g) (2004). Among the available sanctions is the entry of a default judgment against Applicant. See Unicut Corp. v. Unicut, Inc., 220 U.S.P.Q. 1013 (TTAB 1983). A default judgment is more than warranted here, where Applicant's evasion of discovery has been willful. See 3 J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition, § 20:113 (2004) (citing Unicut Corp. v. Unicut, Inc., 222 U.S.P.Q. 341 (TTAB 1984)); see also Wahl v. Fusco, 39 U.S.P.Q.2d 1223 (TTAB 1996) (unpublished) (granting default judgment in cancellation proceeding where registrant failed to respond to discovery and was non-responsive to Board instructions). Applicant's failure to respond to Opposers' Discovery Requests, failure to respond to written requests to discuss the matter and failure to return Opposers' voicemail demonstrates a knowing and deliberate disregard for the instant Opposition proceeding. Therefore, an order of default judgment is an appropriate sanction.

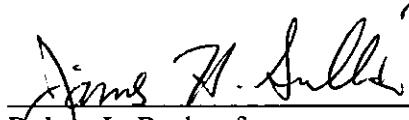
CONCLUSION

For the reasons set forth above, Opposers request an order requiring Applicant to respond to Opposers' Discovery Requests. Opposers also seek any additional relief deemed proper, including an order of default judgment and/or a stay of this proceeding pending receipt of Applicant's discovery responses.

Dated: April 28, 2004

Respectfully submitted,

WHITE & CASE LLP

By: 
Robert L. Raskopf
Jennifer J. Millones
James H. Sullivan
1155 Avenue of the Americas
New York, New York 10036-2787
Tel: 212-819-8200

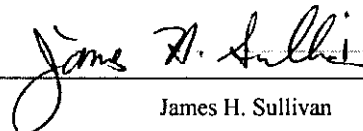
Attorneys for Opposers National Football
League and NFL Properties LLC.

CERTIFICATE OF MAILING BY "EXPRESS MAIL"

"Express Mail" mailing label number: **EL 608307235US**

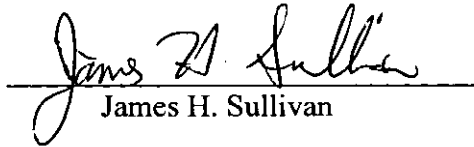
I hereby certify that this document and instructions for payment of fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service in an envelope addressed to the Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3514 on this 28th day of April 2004.

Signature: _____


James H. Sullivan

CERTIFICATE OF SERVICE

I certify that on April 28, 2004, I caused to be served a copy of Opposers' MOTION TO COMPEL DISCOVERY and accompanying AFFIDAVIT OF JAMES H. SULLIVAN by first-class mail to Rakesh M. Amin, Esq., Amin Law LLC, attorney for Applicant, whose address is 217 N. Jefferson St., Suite 500, Chicago, Illinois 60661.


James H. Sullivan

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

NATIONAL FOOTBALL LEAGUE and NFL
PROPERTIES LLC,

Opposers,

— against —

NUTRITION FOR LIFE INTERNATIONAL,
INC.,

Applicant.

Opposition No. 91/157,365

AFFIDAVIT OF JAMES H. SULLIVAN

STATE OF NEW YORK)
) SS:
COUNTY OF NEW YORK)

JAMES H. SULLIVAN, being duly sworn, and having personal knowledge of the
matters set forth herein, deposes and says:

1. I am an attorney with White & Case LLP and admitted to practice law in the state
of New York.
2. I am one of the attorneys representing Opposers National Football League and
NFL Properties LLC in the above-referenced proceeding.
3. I submit this Affidavit in support of Opposers' Motion to Compel Discovery.
4. On March 1, 2004, I served Applicant with Opposers' First Set of Interrogatories,
Opposers' First Request for Production of Documents and Things and Opposers' First Request

for Admissions to Applicant, at Applicant's counsel's address of record before the United States Patent and Trademark Office: Rakesh M. Amin, Amin Law LLC, 217 N. Jefferson St., Suite 500, Chicago, Illinois 60661. The response due date noted on the discovery requests was April 2, 2004.

5. Attached hereto as Exhibit A is a true and correct copy of Opposers' First Set of Interrogatories, together with the accompanying Certificate of Service and cover letter.

6. Attached hereto as Exhibit B is a true and correct copy of Opposers' First Request for Production of Documents and Things, together with the accompanying Certificate of Service.

7. Attached hereto as Exhibit C is a true and correct copy of Opposers' First Request for Admissions to Applicant, together with the accompanying Certificate of Service.

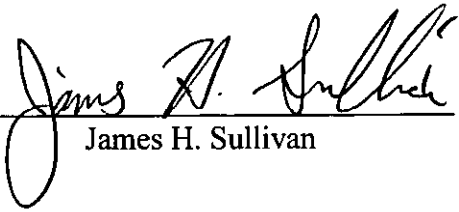
8. On April 12, 2004, I sent a letter via Federal Express to Applicant's counsel. Attached hereto as Exhibit D is a true and correct copy of my April 12, 2004 letter to Applicant's counsel.

9. On April 20, 2004, I telephoned Mr. Amin, and left a voicemail message noting both the continued lack of response to Opposers' discovery requests and the impending start of the testimony period in the proceeding. I requested the courtesy of a return telephone call from Mr. Amin by the end of the day. I specifically stated that Trademark Trial and Appeal Board procedures mandate that a motion to compel be filed with the Board before the opening of the first testimony period in a proceeding.

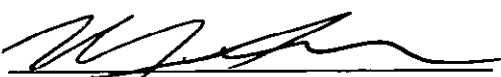
10. To date, Opposers have received no response from Applicant to Opposers' First Set of Interrogatories, Opposers' First Request for Production of Documents and Things, Opposers' First Request for Admissions, Opposers' April 12, 2004 letter or Opposers' April 20, 2004 voicemail message.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 28th day of April, 2004.


James H. Sullivan

SWORN TO and SUBSCRIBED before me
by James H. Sullivan on this 28th day of April, 2004.


Notary Public in and for the State of
New York

MARQUES TRACY
Notary Public, State of New York
No. 01TR6079754
Qualified in New York County
Commission Expires Sept. 3, 2006

RECYCLED

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

NATIONAL FOOTBALL LEAGUE and
NFL PROPERTIES LLC,

Opposers,

Opposition No. 91/157,365

-against-

NUTRITION FOR LIFE INTERNATIONAL,
INC.,

Applicant.

OPPOSERS' FIRST SET OF INTERROGATORIES

PLEASE TAKE NOTICE that pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure ("FRCP") and 37 C.F.R. § 2.120, opposers National Football League and NFL Properties LLC, by their attorneys White & Case LLP, hereby request that applicant Nutrition for Life International, Inc. answer the following interrogatories fully and separately, in writing and under oath, and deliver to the offices of White & Case LLP, 1155 Avenue of the Americas, New York, New York 10036 on Friday, April 2, 2004 at 5:00 p.m.

DEFINITIONS AND INSTRUCTIONS

1. "NFL" means the National Football League and, where applicable, its officers, directors or employees.
2. "NFLP" means NFL Properties LLC and, where applicable, its officers, directors, employees or its predecessor in interest, National Football League Properties, Inc.
3. "Opposers" means the NFL and NFLP.
4. "NFL Marks" means any and/or all of the marks, whether names, terms, symbols, emblems, slogans, designs, colors or other identifying marks, adopted and used in interstate commerce by Opposers in connection with their business of organizing, conducting and promoting the NFL and its thirty-two member clubs, including specifically the following incontestable federal trademark registrations owned by Opposer NFL:

<u>Reg. No.</u>	<u>Mark/Design</u>	<u>International Class(es)</u>
886,055	NFL	42
1,056,303	NFL (Design)	42

5. "NFLI" means Nutrition for Life International, Inc. and, where applicable, its predecessors, successors, assigns, officers, directors, employees, partners, agents, corporate parent, divisions, subsidiaries or affiliates.
6. "NFLI's Designation" means the designation NFLI which is the subject of Application Serial No. 76/043,616 and Opposition No. 91/157,365.
7. "Communication" means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).

8. "Documents" includes writings, drawings, graphs, charts, photographs, phonorecords and other electronic or computerized data compilations from which information can be obtained, translated, if necessary, by NFLI through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of this term.

9. "Things" means all categories of tangible objects not included within the definition of "documents."

10. "Identify" means, when referring to a person, to give, to the extent known, the person's full name, present or last known address and when referring to a natural person, additionally, the present or last known place of employment. Once a person has been identified in accordance with this paragraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

11. "Identify" means, when referring to documents, to give, to the extent known:

- a) the type of document, *e.g.*, letter or memorandum;
- b) the general subject matter of the document;
- c) the date of the document;
- d) the author(s) of the document;
- e) the addressee(s) of the document;
- f) the recipient(s) of the document; and
- g) where not apparent, the relationship of the author(s), addressee(s) and recipient(s) to each other.

12. "Person" means any natural person or any business, legal or governmental entity or association.

13. "Concerning" means relating to, referring to, describing, evidencing or constituting.

14. "Trademark" means trademarks, service marks, collective marks and certification marks.

15. The terms "all" and "each" shall be construed as all and each.

16. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the interrogatory all responses that might otherwise be construed to be outside of its scope.

17. The use of the singular form of any word includes the plural and vice versa.

18. For each interrogatory, identify each person who supplied the information used in the preparation of the answers to each interrogatory.

19. If NFLI claims a privilege with respect to an interrogatory herein, NFLI shall identify the nature of the privilege (including work product) which is being claimed; the name and legal relationship of each person who shared in the communication of the claimed privileged information; and, if the claim refers to a document, the following information shall be provided in the objection:

a) the type of document, *e.g.*, letter or memorandum;

- b) the general subject matter of the document;
- c) the date of the document;
- d) the author(s) of the document;
- e) the addressee(s) of the document;
- f) the recipient(s) of the document; and
- g) where not apparent, the relationship of the author(s), addressee(s) and recipient(s) to each other.

20. In the event that any of these interrogatories calls for a document that has been lost or destroyed, or for information contained in such a document, such document is to be identified by stating the following:

- a) the type of document, *e.g.*, letter or memorandum;
- b) the general subject matter of the document;
- c) the date of the document;
- d) the author(s) of the document;
- e) the addressee(s) of the document;
- f) the recipient(s) of the document;
- g) where not apparent, the relationship of the author(s), addressee(s) and recipient(s) to each other;
- h) the custodian(s) of the document or person(s) otherwise responsible for the document's safekeeping, storage, or filing;
- i) the date the document was lost or destroyed; and
- j) the circumstances surrounding the loss of the document and, if the document was destroyed, the reason for the circumstances surrounding its destruction.

21. If the answer to any interrogatory, or any subsection of any interrogatory, is unknown to NFLI, so state and identify the name(s) and address(es) of any person that might have such information.

22. If any of these interrogatories cannot be answered in full, NFLI shall answer to the extent possible, specifying the reasons for its inability to answer the remainder and stating what information, knowledge or belief NFLI has concerning the unanswered portion.

23. If NFLI objects to the scope or breadth of any of these interrogatories, NFLI shall answer, to the extent possible, that portion of the interrogatory that it can answer notwithstanding its objection.

24. As required by FRCP 26(e), NFLI is under a continuing duty to furnish additional and supplemental responses where such further information becomes known or available between the time of the initial response thereunder and the time of hearing or trial in this proceeding. Opposers reserve the right to propound additional interrogatories.

25. In responding to each interrogatory, NFLI is to review and search all relevant files of all appropriate entities and persons within its possession, custody or control.

26. Unless otherwise indicated in a particular interrogatory, the time period covered by these interrogatories is from January 1, 1995 to the present day.

INTERROGATORIES

1. Identify all persons who provided information or documents for responses to these interrogatories or Opposers' First Request for Production of Documents and Things or Opposers' First Request for Admissions to Applicant, each dated March 1, 2004.

2. Identify any complaints, petitions, oppositions, objections, cancellations, administrative proceedings, office actions, legal opinions, cease and desist letters or civil actions made by or against NFLI in which trademark, dilution, unfair competition, cybersquatting, cyberpiracy and/or copyright claims were alleged.

3. Identify by serial number, registration number or otherwise any state, federal or international application to register any trademark or copyright or any trademark or copyright registration actually obtained, by or for NFLI, for NFLI's Designation.

4. Identify any communications and/or agreements between NFLI and either or both Opposers.

5. Identify all persons who assisted, were responsible for, participated in, or otherwise have information concerning any communications and/or agreements between NFLI and either or both Opposers.

6. Identify all communications between NFLI and professional or collegiate football leagues, teams, players or other persons associated now or in the past with such leagues.

7. Identify all domain name registrations owned by NFLI or any attempts by NFLI to register any domain name containing NFLI's Designation.

8. Identify all persons who were responsible for, participated in, or have information concerning NFLI's creation, consideration, selection, adoption, acquisition and first use of NFLI's Designation, including without limitation, any formal or informal trademark searches, investigations and/or opinions of counsel regarding NFLI's Designation.

9. Identify all uses or plans to use NFLI's Designation, both domestically and internationally, on goods or services.

10. Identify all persons who were responsible for, participated in, or have information concerning informal or formal market research conducted by NFLI or on NFLI's behalf concerning NFLI's Designation, including without limitation, studies, search reports, surveys and market research tests.

11. Identify all persons who were responsible for, participated in, or have information concerning informal or formal market research conducted by NFLI or on NFLI's behalf concerning any marks held by Opposers, including without limitation, studies, search reports, surveys and market research tests.

12. Identify all persons who had any notice of the NFL Marks.

13. Identify any notice by NFLI of the NFL Marks, including without limitation, trademark search reports.

14. Identify all things used, sold or distributed by NFLI or any third party bearing NFLI's Designation, including without limitation advertising, promotional materials, sales materials, travel brochures, registration cards, catalogues, Web sites, brochures, mailing and price lists, whether distributed publicly or not.

15. Identify any period when the use of NFLI's Designation was discontinued and if so, identify the dates and reasons it was not used.

16. Identify NFLI's yearly expenditures to date and planned future expenditures for the advertising or promotion of goods or services bearing NFLI's Designation.

17. Identify any business plans or projections, revenue projections, cost projections and product plans or proposals as they relate to NFLI's Designation.

18. Identify the media in which NFLI advertises or promotes, or intends to advertise or promote, goods or services bearing NFLI's Designation, including without limitation, television, magazines, newspapers, Web sites, trade publications, media schedules and budgets.

19. Identify all persons that assisted, or consulted with, NFLI in advertising, promoting and selling, or in planning to advertise, promote and sell, goods or services bearing NFLI's Designation.

20. Identify any sales agent, retailer, wholesaler, distributor, re-seller, broker or sales organization to which NFLI has or will distribute or sell goods or services bearing NFLI's Designation.

21. Identify the target consumer groups to whom NFLI has or will market, advertise, promote or sell goods or services bearing NFLI's Designation.

22. Identify all persons who assisted, were responsible for, participated in, or otherwise have information concerning the selection of the target consumer groups to whom NFLI has or will market, advertise, promote or sell goods or services bearing NFLI's Designation.

23. Identify any instances of actual or possible confusion, mistake, deception or association of any kind with any third party caused by NFLI's use and/or intended use of NFLI's Designation by NFLI or any other person.

24. Identify the basis for NFLI's allegations that there is no likelihood of confusion between NFLI's Designation and the NFL Marks.

25. Identify the basis for NFLI's allegations that Opposers are barred from objecting to NFLI's Designation "based on laches, acquiescence and estoppel" and "because of Opposers' failure to timely and diligently object to Applicant's prior use" of NFLI's Designation.

26. Identify the basis for NFLI's allegations that the NFL Marks are not famous marks.

27. Identify NFLI's former and current officers and directors and their duties and responsibilities, as well as any partners, corporate parent, subsidiaries or affiliates, predecessors or successors or assigns of NFLI.

28. Identify NFLI's address and telephone number at each location at which NFLI, or its predecessor or successor or assign, has ever maintained or now maintains an office or place of business.

29. Identify the nature of NFLI's business and the period in which it has conducted such business since its inception to the present.

30. Identify all communications that state, compare or attempt to draw attention to a connection between NFLI, its current or former directors, officers, employees or its goods and services, and either or both Opposers or the sport of American football.

31. Identify any instances of legal actions brought or threatened against NFLI on behalf of consumers or NFLI customers or dealers, including but not limited to legal action brought by the Illinois Attorney General's office in 1996 alleging fraud in NFLI's pyramid marketing scheme.


32. Identify each person whom NFLI plans to call as a witness during the testimony period in this opposition proceeding.

33. Identify each person whom NFLI has interviewed, employed or asked to testify as an expert, or whom NFLI plans to call as an expert in this opposition proceeding, and for each such person state that person's: qualifications, opinions expected to offer and grounds for each said opinion.

Dated: New York, New York
March 1, 2004

Respectfully submitted,

WHITE & CASE LLP

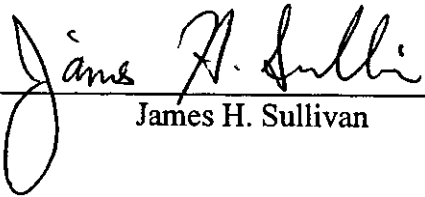
By: 
Robert L. Raskopf
Jennifer J. Millones
James H. Sullivan

1155 Avenue of the Americas
New York, New York 10036
Tel: (212) 819-8200
Fax: (212) 354-8113

ATTORNEYS FOR OPPOSERS

CERTIFICATE OF SERVICE

I certify that on March 1, 2004, I caused to be served a copy of OPPOSERS' FIRST SET OF INTERROGATORIES by first-class mail to Rakesh M. Amin, Esq., Amin Law LLC, attorney for Applicant, whose address is 217 N. Jefferson St., Suite 500, Chicago, Illinois 60661.



James H. Sullivan

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

NATIONAL FOOTBALL LEAGUE and
NFL PROPERTIES LLC,

Opposers,

Opposition No. 91/157,365

-against-

NUTRITION FOR LIFE INTERNATIONAL,
INC.,

Applicant.

**OPPOSERS' FIRST REQUEST FOR PRODUCTION OF
DOCUMENTS AND THINGS**

PLEASE TAKE NOTICE that pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure ("FRCP") and 37 C.F.R. § 2.120, opposers National Football League and NFL Properties LLC, by their attorneys White & Case LLP, hereby request that applicant Nutrition for Life International, Inc. produce and permit the undersigned to inspect and copy the documents and things described below at the offices of White & Case LLP, 1155 Avenue of the Americas, New York, New York 10036, or at a place agreed upon by the parties, on Friday, April 2, 2004 at 5:00 p.m.

DEFINITIONS AND INSTRUCTIONS

1. "NFL" means the National Football League and, where applicable, its officers, directors or employees.
2. "NFLP" means NFL Properties LLC and, where applicable, its officers, directors, employees or its predecessor in interest, National Football League Properties, Inc.
3. "Opposers" means the NFL and NFLP.
4. "NFL Marks" means any and/or all of the marks, whether names, terms, symbols, emblems, slogans, designs, colors or other identifying marks, adopted and used in interstate commerce by Opposers in connection with their business of organizing, conducting and promoting the NFL and its thirty-two member clubs, including specifically the following incontestable federal trademark registrations owned by Opposer NFL:

<u>Reg. No.</u>	<u>Mark/Design</u>	<u>International Class(es)</u>
886,055	NFL	42
1,056,303	NFL (Design)	42

5. "NFLI" means Nutrition for Life International, Inc. and, where applicable, its predecessors, successors, assigns, officers, directors, employees, partners, agents, corporate parent, divisions, subsidiaries or affiliates.
6. "NFLI's Designation" means the designation NFLI which is the subject of Application Serial No. 76/043,616 and Opposition No. 91/157,365.

7. "Communication" means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).

8. "Documents" includes writings, drawings, graphs, charts, photographs, phonorecords and other electronic or computerized data compilations from which information can be obtained, translated, if necessary, by NFLI through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of this term.

9. "Things" means all categories of tangible objects not included within the definition of "documents."

10. "Identify" means, when referring to a person, to give, to the extent known, the person's full name, present or last known address and when referring to a natural person, additionally, the present or last known place of employment. Once a person has been identified in accordance with this paragraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

11. "Identify" means, when referring to documents, to give, to the extent known:

- a) the type of document, *e.g.*, letter or memorandum;
- b) the general subject matter of the document;
- c) the date of the document;
- d) the author(s) of the document;
- e) the addressee(s) of the document;
- f) the recipient(s) of the document; and

- g) where not apparent, the relationship of the author(s), addressee(s) and recipient(s) to each other.

12. "Person" means any natural person or any business, legal or governmental entity or association.

13. "Concerning" means relating to, referring to, describing, evidencing or constituting.

14. "Trademark" means trademarks, service marks, collective marks and certification marks.

15. The terms "all" and "each" shall be construed as all and each.

16. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

17. The use of the singular form of any word includes the plural and vice versa.

18. Where a claim of privilege is asserted in objecting to these requests, NFLI shall identify the nature of the privilege (including work product) which is being claimed; and the following information shall be provided in the objection:

- a) the type of document, *e.g.*, letter or memorandum;
- b) the general subject matter of the document;
- c) the date of the document;
- d) the author(s) of the document;

- e) the addressee(s) of the document;
- f) the recipient(s) of the document; and
- g) where not apparent, the relationship of the author(s), addressee(s) and recipient(s) to each other.

19. If NFLI objects to the scope or breadth of any of these requests, NFLI should identify, to the extent possible, those documents that NFLI will produce.

20. In the event that any of these requests calls for a document that has been lost or destroyed, or for information contained in such a document, such document is to be identified by stating the following:

- a) the type of document, *e.g.*, letter or memorandum;
- b) the general subject matter of the document;
- c) the date of the document;
- d) the author(s) of the document;
- e) the addressee(s) of the document;
- f) the recipient(s) of the document;
- g) where not apparent, the relationship of the author(s), addressee(s) and recipient(s) to each other;
- h) the custodian(s) of the document or person(s) otherwise responsible for the document's safekeeping, storage, or filing;
- i) the date the document was lost or destroyed; and
- j) the circumstances surrounding the loss of the document and, if the document was destroyed, the reason for the circumstances surrounding its destruction.

21. As required by FRCP 26(e), NFLI is under a continuing duty to furnish additional and supplemental documents where such further documents become known or

available between the time of the initial response thereunder and the time of hearing or trial in this proceeding. Opposers reserve the right to propound additional requests for production of documents and things.

22. In responding to each request, NFLI is to review and search all relevant files of all appropriate entities and persons.

23. As required by FRCP 34(b), NFLI must produce all documents requested for inspection or copying either as they are kept in the usual course of business or shall organize and label them to correspond with the categories requested herein.

24. Unless otherwise indicated in a particular request, the time period covered by these requests is from January 1, 1995 to the present day.

DOCUMENT REQUESTS

1. All documents and things identified in response to Opposers' First Set of Interrogatories or Opposers' First Request for Admissions to Applicant, each dated March 1, 2004.

2. All documents and things concerning any complaints, petitions, oppositions, objections, cancellations, administrative proceedings, office actions, legal opinions, cease and desist letters or civil actions made by or against NFLI, including without limitation disputes relating to NFLI's registration or attempts to register and/or use NFLI's Designation, in which trademark, dilution, unfair competition, cybersquatting, cyberpiracy and/or copyright claims were alleged.

3. All documents and things concerning any communications between NFLI (including without limitation, through an attorney) and the Patent and Trademark Office, the Trademark Trial and Appeal Board or the Copyright Office.
4. All documents and things concerning any domain name registrations owned by NFLI or any attempts by NFLI to register any domain name containing NFLI's Designation.
5. All documents and things concerning NFLI's creation, consideration, selection, adoption, acquisition and first use of NFLI's Designation, including without limitation, any formal or informal trademark searches, investigations and/or opinions of counsel regarding NFLI's Designation.
6. All documents and things concerning either or both Opposers or any of the NFL Marks, including without limitation any communications between NFLI and either or both Opposers.
7. All documents and things concerning any notice by NFLI of Opposers' NFL Marks, including without limitation, trademark search reports.
8. All documents and things concerning any communications between NFLI and professional or collegiate football leagues, teams or current or former players.
9. All documents and things concerning any communications that state, compare or attempt to draw attention to a connection between NFLI, its current or former directors, officers, employees or its goods and services, and either or both Opposers or the sport of American football.

10. All documents and things associated with creating NFLI's Designation.
11. All documents and things concerning any change or modification of NFLI's Designation since the time of conception of the NFLI Designation by NFLI.
12. All documents and things concerning the discontinued use, if any, of NFLI's Designation since the time of conception of the NFLI Designation by NFLI.
13. All documents and things concerning NFLI's first use, sale, and/or shipment both domestically and internationally, of goods or services bearing NFLI's Designation, and copies of all such things used, sold and/or shipped.
14. All documents and things concerning the sale of any good or service bearing NFLI's Designation, including without limitation, invoices, sales reports evidencing dollar and unit volume of sales, packaging and labeling.
15. All documents and things concerning NFLI's yearly expenditures to date and planned future expenditures for the advertising or promotion of goods or services bearing NFLI's Designation.
16. All documents and things concerning NFLI's yearly expenditures to date and projected future expenditures for the manufacture, production and offering for sale of goods or services bearing NFLI's Designation.
17. All documents and things concerning the advertising or promotion of goods or services bearing NFLI's Designation, including without limitation, advertisements,

Web sites, promotional materials, sales materials, catalogues, brochures, budgets, media schedules, mailing and price lists whether distributed publicly or not.

18. All documents and things concerning any business plans or projections, revenue projections, cost projections and product plans or proposals as they relate to NFLI's Designation.

19. All documents and things concerning the territories, both domestic and international, through which NFLI offers, has offered, or will offer for sale goods or services bearing NFLI's Designation.

20. All documents and things sufficient to identify the target consumer groups to whom NFLI has or will market, advertise, promote or sell goods or services bearing NFLI's Designation.

21. All documents and things concerning communications regarding NFLI's Designation, either internally or with third parties.

22. All documents and things concerning any assignment, license or other transfer to or from NFLI of any right in NFLI's Designation.

23. All documents and things concerning all third parties that use, manufacture, sell and/or distribute goods or services bearing NFLI's Designation or otherwise make use of NFLI's Designation.

24. All documents and things concerning any third-party agreements into which NFLI has entered to manufacture, sell and/or distribute goods or services bearing NFLI's Designation or otherwise make use of NFLI's Designation.

25. All documents and things concerning any third-party uses of NFLI's Designation or any variation thereof of which NFLI is aware, including without limitation, documents concerning whether any action was taken against that third party and how such disputes were resolved, and any specimens of such third-party uses of such mark.

26. All documents and things concerning any instances of actual or possible confusion, mistake, deception or association of any kind with any third party caused by NFLI's use and/or intended use of NFLI's Designation by NFLI or any other person.

27. All documents and things concerning communications between NFLI and any other person in which a person inquired about, commented upon or referred to Opposers or Opposers' goods or services in any way.

28. All documents and things concerning NFLI's allegations that there is no likelihood of confusion between NFLI's Designation and the NFL Marks.

29. All documents and things concerning NFLI's allegations that Opposers are barred from objecting to NFLI's Designation "based on laches, acquiescence and estoppel" and "because of Opposers' failure to timely and diligently object to Applicant's prior use" of the NFLI Designation.

30. All documents and things concerning NFLI's allegations that the NFL Marks are not famous marks.

31. All documents and things concerning any legal action or threat of action against NFLI on behalf of consumers or NFLI customers or dealers.

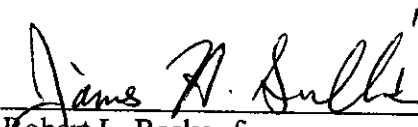
32. All documents and things sufficient to show NFLI's corporate structure and NFLI's former and current officers and directors and their duties and responsibilities, as well as any partners, corporate parent, subsidiaries or affiliates, predecessors or successors or assigns of NFLI.

33. All documents and things sufficient to show NFLI's policies for retention or destruction of records, documents or files.

Dated: New York, New York
March 1, 2004

Respectfully submitted,

WHITE & CASE LLP

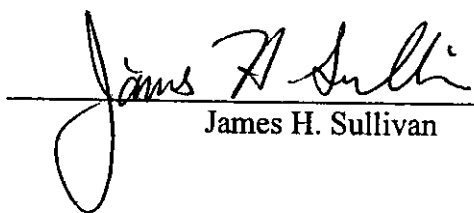
By: 
Robert L. Raskopf
Jennifer J. Millones
James H. Sullivan

1155 Avenue of the Americas
New York, New York 10036
Tel: (212) 819-8200
Fax: (212) 354-8113

ATTORNEYS FOR OPPOSERS

CERTIFICATE OF SERVICE

I certify that on March 1, 2004, I caused to be served a copy of OPPOSERS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS by first-class mail to Rakesh M. Amin, Esq., Amin Law LLC, attorney for Applicant, whose address is 217 N. Jefferson St., Suite 500, Chicago, Illinois 60661.



James H. Sullivan

RECYCLED



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

NATIONAL FOOTBALL LEAGUE and
NFL PROPERTIES LLC,

Opposers,

Opposition No. 91/157,365

-against-

NUTRITION FOR LIFE INTERNATIONAL,
INC.,

Applicant.

OPPOSERS' FIRST REQUEST FOR ADMISSIONS TO
APPLICANT

PLEASE TAKE NOTICE that pursuant to Rules 26 and 36 of the Federal Rules of Civil Procedure ("FRCP") and 37 C.F.R. § 2.120, opposers National Football League and NFL Properties LLC, by their attorneys White & Case LLP, hereby request that applicant Nutrition for Life International, Inc. admit to the truth of the following separately, fully, and in writing, by Friday, April 2, 2004 at 5:00 p.m.

DEFINITIONS AND INSTRUCTIONS

1. “NFL” means the National Football League and, where applicable, its officers, directors or employees.
2. “NFLP” means NFL Properties LLC and, where applicable, its officers, directors, employees or its predecessor in interest, National Football League Properties, Inc.
3. “Opposers” means the NFL and NFLP.
4. “NFL Marks” means any and/or all of the marks, whether names, terms, symbols, emblems, slogans, designs, colors or other identifying marks, adopted and used in interstate commerce by Opposers in connection with their business of organizing, conducting and promoting the NFL and its thirty-two member clubs, including specifically the following incontestable federal trademark registrations owned by Opposer NFL:

<u>Reg. No.</u>	<u>Mark/Design</u>	<u>International Class(es)</u>
886,055	NFL	42
1,056,303	NFL (Design)	42

5. “NFLI” means Nutrition for Life International, Inc. and, where applicable, its predecessors, successors, assigns, officers, directors, employees, partners, agents, corporate parent, divisions, subsidiaries or affiliates.
6. “NFLI’s Designation” means the designation NFLI which is the subject of Application Serial No. 76/043,616 and Opposition No. 91/157,365.

7. “Communication” means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).

8. “Documents” includes writings, drawings, graphs, charts, photographs, phonorecords and other electronic or computerized data compilations from which information can be obtained, translated, if necessary, by NFLI through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of this term.

9. “Things” means all categories of tangible objects not included within the definition of “documents.”

10. “Identify” means, when referring to a person, to give, to the extent known, the person’s full name, present or last known address and when referring to a natural person, additionally, the present or last known place of employment. Once a person has been identified in accordance with this paragraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

11. “Identify” means, when referring to documents, to give, to the extent known:

- a) the type of document, *e.g.*, letter or memorandum;
- b) the general subject matter of the document;
- c) the date of the document;
- d) the author(s) of the document;
- e) the addressee(s) of the document;
- f) the recipient(s) of the document; and

- g) where not apparent, the relationship of the author(s), addressee(s) and recipient(s) to each other.

12. "Person" means any natural person or any business, legal or governmental entity or association.

13. "Concerning" means relating to, referring to, describing, evidencing or constituting.

14. "Trademark" means trademarks, service marks, collective marks and certification marks.

15. "Use" means use in commerce as 15 U.S.C.A. § 1127 defines that term.

16. The terms "all" and "each" shall be construed as all and each.

17. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the request for admission all responses that might otherwise be construed to be outside of its scope.

18. The use of the singular form of any word includes the plural and vice versa.

19. Where a claim of privilege is asserted in objecting to any request for admission, NFLI shall identify the nature of the privilege (including work product) which is being claimed; and, if the claim refers to a document, the following information shall be provided in the objection:

- a) the type of document, *e.g.*, letter or memorandum;
- b) the general subject matter of the document;

- c) the date of the document;
- d) the author(s) of the document;
- e) the addressee(s) of the document;
- f) the recipient(s) of the document; and
- g) where not apparent, the relationship of the author(s), addressee(s) and recipient(s) to each other.

20. If NFLI objects to the scope or breadth of any request for admission, NFLI should identify, to the extent possible, that portion of the request that it can answer notwithstanding its objection.

21. If the answer to any request for admission is anything other than an unqualified admission, NFLI will identify:

- a) all facts supporting NFLI's answer;
- b) all documents and other evidence upon which NFLI bases its answer;
- c) all persons who have information regarding NFLI's answer.

22. As required by FRCP 26(e), NFLI is under a continuing duty to furnish additional and supplemental responses where such further information becomes known or available between the time of the initial response thereunder and the time of hearing or trial in this proceeding. Opposers reserve the right to propound additional requests for admission.

23. In responding to each request for admission, NFLI is to make a reasonable inquiry for readily obtainable information and to review and search all relevant files of all appropriate entities and persons within its possession, custody or control.

REQUESTS

1. The NFL owns the NFL Marks.
2. The NFL first used the NFL Marks in commerce in 1941 in connection with its goods and services.
3. The NFL has not abandoned the NFL Marks.
4. Opposers and/or their licensees use the NFL Marks in connection with a wide array of goods and services.
5. Opposers use the NFL Marks in connection with advertising and promoting the NFL's goods and services.
6. The NFL Marks are distinctive and strong as applied to the NFL's goods and services.
7. The NFL Marks have acquired secondary meaning in the mind of the public.
8. Persons recognize the NFL, NFLP and/or their licensees as the source of goods or services bearing the NFL Marks.
9. The NFL Marks are famous.
10. NFLI does not possess a valid license or any other authorization by either or both Opposers to use any of the NFL Marks.

11. NFLI had knowledge of Opposers' use of the NFL Marks prior to May 10, 2000.

12. NFLI has conducted one or more trademark searches in connection with NFLI's Designation.

13. NFLI uses, has used or intends to use NFLI's Designation in connection with advertising, promoting and/or selling goods or services.

14. NFLI intends to advertise, promote and/or sell goods or services bearing NFLI's Designation to fans of the NFL.

15. NFLI offers, has offered or intends to offer nutritional supplement products for sale, some of which have been banned by the NFL for use by NFL players.

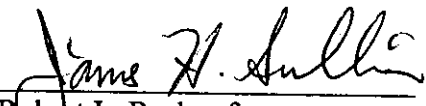
16. In 1996, NFLI entered into a settlement with the Illinois Attorney General's office after the Attorney General brought a lawsuit on behalf of Illinois consumers in Cook County Circuit Court alleging fraud in NFLI's pyramid marketing scheme.

17. NFLI hereby stipulates to the authenticity of all documents or things it has provided to Opposers in response to both Opposers' First Request for Production of Documents and Things and Opposers' First Set of Interrogatories, each dated March 1, 2004.

Dated: New York, New York
March 1, 2004

Respectfully submitted,

WHITE & CASE LLP

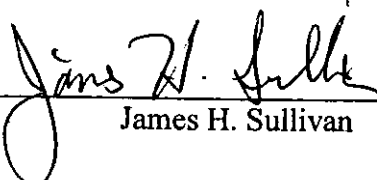
By: 
Robert L. Raskopf
Jennifer J. Millones
James H. Sullivan

1155 Avenue of the Americas
New York, New York 10036
Tel: (212) 819-8200
Fax: (212) 354-8113

ATTORNEYS FOR OPPOSERS

CERTIFICATE OF SERVICE

I certify that on March 1, 2004, I caused to be served a copy of OPPOSERS' FIRST REQUEST FOR ADMISSIONS by first-class mail to Rakesh M. Amin, Esq., Amin Law LLC, attorney for Applicant, whose address is 217 N. Jefferson St., Suite 500, Chicago, Illinois 60661.



James H. Sullivan



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WHITE & CASE
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MEXICO CITY
SÃO PAULO

JOHANNESBURG

April 12, 2004

VIA FEDERAL EXPRESS

Rakesh M. Amin, Esq.
Amin Law LLC
217 N. Jefferson St., Suite 500
Chicago, Illinois 60661

Re: Service of Discovery Requests by Opposers National Football League and NFL Properties
LLC to Nutrition for Life International, Inc. in Opposition No. 91/157,365; Mark: NFLI

Dear Mr. Amin:

On March 1, 2004, we served Opposer's First Request for Production of Documents and Things, Opposer's First Request for Admissions to Applicant and Opposer's First Set of Interrogatories in the above-referenced opposition. The deadline for your response to Opposer's discovery requests has now passed.

Among the remedies available under Federal Rules of Civil Procedure and the TBMP for failure to respond to discovery requests is default judgment. If we do not receive your responses to Opposer's discovery by April 19, 2004, we will be forced to consider all available legal options.

We do not intend, nor should you construe, this letter or its contents as a waiver or a relinquishment of any right or remedy that our client may have in this matter; we specifically reserve all such rights and remedies, including the right to move to compel.

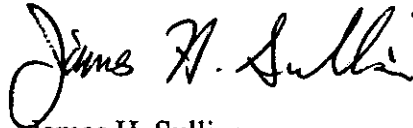
WHITE & CASE
LIMITED LIABILITY PARTNERSHIP

Rakesh M. Amin, Esq.

Page 2

Please feel free to contact me at the above number should you have questions.

Sincerely,



James H. Sullivan

cc: David M. Proper, Esq.
Robert L. Raskopf, Esq.
Jennifer J. Millones, Esq.